

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Martha Jane Smith,)	C/A No. 6:10-2211-HFF-BHH
)	
Plaintiff,)	
)	REPORT AND RECOMMENDATION
vs.)	
)	
Greenville County School District,)	
)	
Defendant.)	
_____)	

Introduction

Martha Jane Smith ("Plaintiff"), proceeding *pro se*, brings this civil action against her former employer.¹ Plaintiff files this action *in forma pauperis* under 28 U.S.C. § 1915. She requests that this court help her to get her job back. The complaint should be dismissed for failure to state a claim on which relief may be granted and lack of subject matter jurisdiction.

Pro Se and In Forma Pauperis Review

Under established local procedure in this judicial district, a careful review has been made of the *pro se* complaint herein pursuant to the procedural provisions of 28 U.S.C. § 1915. This review has been conducted in light of the following precedents: *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Estelle v. Gamble*, 429 U.S. 97 (1976); *Haines v. Kerner*, 404 U.S. 519 (1972); and *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978). The complaint *sub judice* has been filed pursuant to 28 U.S.C. § 1915, which permits an

¹ Pursuant to the provisions of 28 U.S.C. §636(b)(1)(B), and Local Rule 73.02(B)(2)(e), D.S.C., the undersigned is authorized to review such complaints for relief and submit findings and recommendations to the District Court.

indigent litigant to commence an action in federal court without paying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss the case upon a finding that the action “fails to state a claim on which relief may be granted,” is “frivolous or malicious,” or “seeks monetary relief against a defendant who is immune from such relief.” § 1915(e)(2)(B). A finding of frivolity can be made where the complaint “lacks an arguable basis either in law or in fact.” *Denton v. Hernandez*, 504 U.S. 25, 31 (1992). Hence, under § 1915(e)(2)(B), a claim based on a meritless legal theory may be dismissed *sua sponte*. *Neitzke v. Williams*, 490 U.S. 319 (1989); *Allison v. Kyle*, 66 F.3d 71 (5th Cir. 1995). The court may dismiss a claim as “factually frivolous” under § 1915(e) if the facts alleged are clearly baseless. *Denton*, 504 U.S. at 31. In making this determination, the court is not bound to accept without question the truth of the plaintiff’s allegations, but rather need only weigh the plaintiff’s factual allegations in his favor. *Id.*

This court is required to liberally construe *pro se* documents, *Erickson v. Pardus*, 551 U.S. 89 (2007), holding them to a less stringent standard than those drafted by attorneys. *Estelle v. Gamble*, 429 U.S. 97 (1976); *Hughes v. Rowe*, 449 U.S. 9 (1980) (*per curiam*). Even under this less stringent standard, however, the *pro se* complaint is subject to summary dismissal. The mandated liberal construction afforded to *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so, but a district court may not rewrite a petition to include claims that were never presented, *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999), or construct the plaintiff’s legal arguments for him, *Small v. Endicott*,

998 F.2d 411, 417-18 (7th Cir. 1993), or “conjure up questions never squarely presented” to the court, *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. See *Weller v. Dep’t of Social Servs.*, 901 F.2d 387 (4th Cir. 1990).

Background

Plaintiff’s complaint contains sparse factual information, and it is difficult to understand. It appears that Plaintiff was employed at some time by the defendant. Plaintiff appears to allege that the defendant terminated good workers and replaced them with bad workers on drugs. Plaintiff states, “I want my job back. I like to work. I do good job work (sic) schools. Vocational Rehabilitation help (sic) get job.” Plaintiff’s civil cover sheet indicates that she believes that her legal claim relates to employment and the American with Disabilities Act. Additionally, Plaintiff lists nine individuals’ names and job duties who apparently may be, or were, employed by the defendant.

Discussion

“Federal courts are courts of limited jurisdiction. A district court must jealously protect its jurisdiction, declining to entertain those cases over which it has no jurisdiction but insisting on hearing those matters properly before it.” *Woodward v. Newcourt Commercial Fin. Corp.*, 60 F.Supp.2d 530, 531 (D.S.C. 1999). Because federal courts have limited subject matter jurisdiction, there is no presumption that the court has jurisdiction. *Pinkley, Inc. v. City of Frederick*, 191 F.3d 394, 399 (4th Cir. 1999). “Furthermore, it is always incumbent upon a federal court to evaluate its jurisdiction *sua*

sponte, to ensure that it does not decide controversies beyond its authority.” *Davis v. Pak*, 856 F.2d 648, 650 (4th Cir. 1988). “[T]he facts providing the court jurisdiction must be affirmatively alleged in the complaint.” *Id.* (citing *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178 (1936)). To this end, Federal Rule of Civil Procedure 8(a)(1) requires that the complaint provide “a short plain statement of the grounds upon which the court’s jurisdiction depends,” If, however, the complaint does not contain “an affirmative pleading of a jurisdictional basis, the federal court may find that it has jurisdiction if the facts supporting jurisdiction have been clearly pleaded.” *Id.* (citing 2 *Moore’s Federal Practice* § 8.03[3] (3d ed. 1997)). Although the absence of subject matter jurisdiction may be raised at any time during the case, determining jurisdiction at the outset of the litigation is the most efficient procedure. *Lovern v. Edwards*, 190 F.3d 648, 654 (4th Cir. 1999). If the court, viewing the allegations in the light most favorable to the plaintiff, finds insufficient allegations in the pleadings, the court will lack subject matter jurisdiction. *Id.*

Title VII, codified at 42 U.S.C. §§ 2000e to 2000e-16, creates a federal cause of action for employment discrimination; however, if this action is based upon Title VII, a claimant must first exhaust administrative remedies before filing a claim in federal court. *Sloop v. Memorial Mission Hosp., Inc.*, 198 F.3d 147, 148 (4th Cir. 1999). Similarly, a plaintiff must file a charge with the EEOC before bringing a civil suit for violation of the American with Disabilities Act, codified at 42 U.S.C. § 12101, et seq. See *Davis v. Virginia Commonwealth Univ.*, 180 F.3d 626, 628 n.3 (4th Cir. 1999). *Cf. Jones v. U.P.S., Inc.*, 502 F.3d 1176, 1183 (10th Cir. 2007) (noting that in the Tenth Circuit exhaustion of remedies is a jurisdictional prerequisite to suit). A federal court can assume jurisdiction over a Title

VII claim only after the claimant has complied with the various administrative procedures set forth in 42 U.S.C. § 2000e-5(b). *Davis v. North Carolina Dep't of Corr.*, 48 F.3d 134, 136-37 (4th Cir. 1995). These procedures “include an investigation of the complaint and a determination by the [Equal Employment Opportunity Commission (EEOC)] as to whether ‘reasonable cause’ exists to believe that the charge of discrimination is true.” *Id.* at 137. EEOC must then decide whether it will bring a claim in federal court or if it will issue a “right-to-sue” letter, “which letter is *essential* to initiation of a private Title VII suit in federal court.” *Id.* at 138. The plaintiff's claim with the EEOC “defines the scope of [his] subsequent right to institute a civil suit.” *Smith v. First Union Nat'l Bank*, 202 F.3d 234, 247 (4th Cir. 2000). Only claims “reasonably related” to those in the EEOC charge may be advanced in a subsequent civil suit. *Id.* South Carolina has anti-discrimination laws similar to those of Title VII and a “deferral agency” with essentially the same powers as the EEOC – the South Carolina Human Affairs Commission (SCHAC). Accordingly, a claimant must first file his claim with such agency within 180 days from the last act of discrimination. See *id.* (under § 2000e-5(c), “commencement of proceedings under state law is a prerequisite to EEOC action where a state remedial scheme exists.”). The purpose of this deferral procedure is to give the state agency a chance to resolve the claim and thereby possibly obviate the need for the involvement of the federal agency or courts.² See *id.* at 136. In this case, Plaintiff has not alleged in the complaint herein that she filed a claim with SCHAC or that she either has received an EEOC right-to-sue letter or is entitled to a right-

² The timely filing of a verified complaint with the EEOC is another precondition to filing suit. In South Carolina and other deferral states, the complaint must be filed with the EEOC by the earlier of 300 days from the last discriminatory act or 30 days from the termination of the state agency's proceeding.

to-sue letter. Accordingly, this court has no federal question subject matter jurisdiction over this lawsuit.

Plaintiff may be alleging a state law claim for wrongful discharge, which could come within this court's diversity subject matter jurisdiction if the diversity statute's requirements are satisfied. *Cianbro Corp. v. Jeffcoat & Martin*, 804 F. Supp. 784, 788-791 (D.S.C. 1992), *aff'd*, 10 F.3d 806 (4th Cir. 1993)[Table]. The diversity statute requires complete diversity of parties and an amount in controversy in excess of seventy-five thousand dollars (\$75,000.00). See 28 U.S.C. § 1332(a). Complete diversity of parties in a case means that no party on one side may be a citizen of the same State as any party on the other side. See *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 372-374 (1978). Plaintiff alleges that she is a resident of Greenville, South Carolina, and that the defendant is located in Greenville, South Carolina. Thus, it appears that complete diversity of parties is not present. Plaintiff does not allege an amount in controversy. Accordingly, this court has no diversity jurisdiction over this lawsuit because Plaintiff's factual allegations are insufficient to support diversity jurisdiction.

Even if Plaintiff had properly alleged subject matter jurisdiction, summary dismissal is recommended for failure to state a claim on which relief may be granted. Plaintiff failed to set forth sufficient facts to permit this case to go forward. For example, Plaintiff does not allege whether she has a disability or any actions, or inferences of, any type of discrimination by the defendant. Although the court must liberally construe the *pro se* complaint, Plaintiff must do more than make mere conclusory statements to state a claim. *Adams v. Rice*, 40 F.3d 72, 74-75 (4th Cir. 1994) (finding that a complaint was subject to

summary dismissal because it did not contain any facts to support the claim); *Brown v. Zavaras*, 63 F.3d 967 (10th Cir. 1995). While Plaintiff is not required to plead facts sufficient to prove his case as an evidentiary matter in the complaint, he must allege facts that support a claim for relief. *Bass v. Dupont*, 324 F.3d 761, 765 (4th Cir. 2003). See also *Francis v. Giacomelli*, 588 F.3d 186, 192-93 (4th Cir. 2009) (explaining that a plaintiff may proceed into the litigation process only when his complaint is justified by both law and fact). In this case, even liberally construing the complaint, Plaintiff failed to set forth any specific pertinent factual allegations against the defendant. Therefore, the complaint does not “contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)).

Recommendation

It is recommended that the District Court dismiss this action *without prejudice* and without issuance and service of process for lack of subject matter jurisdiction and failure to state a claim on which relief may be granted. See *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972). **Plaintiff's attention is directed to the important notice on the next page.**

s/Bruce Howe Hendricks
United States Magistrate Judge

August 31, 2010
Greenville, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).